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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	No. 3:19-cr-00057-SLG-MMS
	)	
Plaintiff,	)	
	)	<b>PLEA AGREEMENT</b>
v.	)	
	)	
MICHAEL DON ROBERTSON,	)	
	)	
Defendant.	)	
	)	

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**Unless the parties jointly inform the Court in writing of any additional agreements, this document in its entirety contains the terms of the plea agreement between the defendant and the United States. This agreement is limited to the District of Alaska; it does not bind other federal, state, or local prosecuting authorities.**

**I. SUMMARY OF AGREEMENT, FEDERAL RULE OF CRIMINAL PROCEDURE 11**

**A. Summary of Agreement**

The defendant agrees to plead guilty to the following count(s) of the Information in this case: Count 1: Conspiracy to Commit Controlled Substance Fraud, in violation of 21 U.S.C. §§ 843(a)(3) and 846; and Count 2: Health Care Fraud, in violation of 18 U.S.C. § 1347. The parties are free to argue for any sentence authorized by law.

The United States agrees not to prosecute the defendant further for any other offense related to the event(s) that resulted in the charge(s) contained in the Information.

The defendant will waive all rights to appeal the conviction(s) and sentence imposed under this agreement. The defendant will also waive all rights to collaterally attack the conviction(s) and sentence, except on the grounds of ineffective assistance of counsel or the voluntariness of the plea(s).

The defendant agrees not to apply for a DEA registration for a period of 10 years following the date the Court accepts this plea agreement.

**B. Federal Rule of Criminal Procedure 11**

Unless the parties otherwise inform the Court in writing, Federal Rule of Criminal Procedure 11(c)(1)(A) and (B) will control this plea agreement. Thus, the defendant may not withdraw from this agreement or the guilty plea(s) if the Court rejects the parties' sentencing recommendations at the sentencing hearing.

**II. CHARGES, ELEMENTS, FACTUAL BASIS, STATUTORY PENALTIES AND OTHER MATTERS AFFECTING SENTENCE**

**A. Charges**

**1. The defendant agrees to plead guilty to the following count(s) of the Information:**

Count 1: Conspiracy to Commit Controlled Substance Fraud, a violation of

21 U.S.C. §§ 843(a)(3) and 846; and

Count 2: Health Care Fraud, a violation of 18 U.S.C. § 1347

**B. Elements**

The elements of the charge(s) in Count 1: Conspiracy to Commit Controlled Substance Fraud, a violation of 21 U.S.C. §§ 843(a)(3) and 846, to which the defendant is pleading guilty, are as follows:

1. There was an agreement among two or more persons to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; and
2. The defendant joined in the conspiracy, knowing of its purpose, and intending to help accomplish that purpose; and
3. With the intent to accomplish the purpose of the conspiracy, the defendant knowingly distributed controlled substances outside the usual course of professional practice and without a legitimate medical purpose, and did so with intent to distribute controlled substances outside the course of professional practice.

The elements of the charge(s) in Count 2: Health Care Fraud, a violation of 18 U.S.C. § 1347, to which the defendant is pleading guilty, are as follows:

1. The defendant knowingly and willfully executed, or attempted to execute, a scheme or artifice in connection with the delivery of or payment for health care benefits, items, or services; and
2. The scheme or artifice was to defraud any health care benefit program or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program.

#### **C. Factual Basis**

The defendant admits the truth of the allegations in Counts 1 and 2 of the Information and the truth of the following statement, and the parties stipulate that the Court may rely upon this statement to support the factual basis for the guilty plea(s) and for the imposition of the sentence:

During the period of approximately November 8, 1999, until and including May 3, 2018, the defendant, Michael Don Robertson, held Alaska Medical License #MEDO4338, which was issued by the Alaska State Medical Board. The defendant also had a DEA number that allowed him to issue prescriptions for controlled substances.

During the period of approximately May 15, 2015, until and including March 19, 2018, within the District of Alaska, the defendant knowingly and intentionally distributed controlled substances outside the usual course of professional practice and without a

legitimate medical purpose, and the defendant did so with the intent to distribute them outside the course of medical practice.

Specifically, the defendant issued 465 prescriptions for meperidine to 30 different recipients, totaling 32,109 meperidine pills. Meperidine, commonly known as Demerol, is a Schedule II controlled substance. Meperidine is an opioid with an abuse liability similar to morphine.

In this case, the 465 meperidine prescriptions were outside the course of usual medical practice because the defendant knew that the recipients did not truly need meperidine for a legitimate medical purpose. Rather, the defendant issued the meperidine prescriptions as part of a conspiracy in which recipients filled the meperidine prescriptions and, then, distributed the meperidine to the defendant. In exchange for the recipients diverting the meperidine to the defendant, the defendant provided prescriptions for controlled substances (including Fentanyl and Oxycodone) to the recipients. The 32,109 meperidine pills had a retail value of approximately \$128,436 (\$4/pill) and a street value of approximately \$192,654 (\$6/pill).

Further, the defendant failed to make and preserve accurate records regarding approximately 790 prescriptions for controlled substances. The defendant failed to keep any medical records whatsoever regarding five patients to whom he wrote prescriptions for controlled substances. The defendant caused claims to be submitted to Medicaid regarding these 790 prescriptions, resulting in Medicaid paying \$3,286.87 to the defendant's medical practice based on those claims. Further, Medicaid paid \$3,601.52 to pharmacies for these

790 controlled substance prescriptions. These claims were a scheme to obtain, by means of false or fraudulent pretenses, money under the custody or control of Medicaid.

Medicaid is a health care benefit program, as that term is defined in 18 U.S.C. § 24, because it is a public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.

#### **D. Statutory Penalties and Other Matters Affecting Sentence**

##### **1. Statutory Penalties**

The maximum statutory penalties applicable to the charges to which the defendant is pleading guilty, based on the facts to which the defendant will admit in support of the guilty plea(s), are as follows:

Count 1: Conspiracy to Commit Controlled Substance Fraud, in violation of

21 U.S.C. §§ 843(a)(3) and 846:

- 1) A term of imprisonment of not more than 4 years;
- 2) A fine of not more than \$250,000.00;
- 3) Supervised release of not more than 3 years; and
- 4) A mandatory special assessment of \$100.00.

Count 2: Health Care Fraud, in violation of 18 U.S.C. § 1347:

- 1) A term of imprisonment of not more than 10 years;
- 2) A fine of not more than \$250,000.00;
- 3) Supervised release of not more than 3 years; and

- 4) A mandatory special assessment of \$100.00.

## **2. Other Matters Affecting Sentence**

### **a. Conditions Affecting the Defendant's Sentence**

The following conditions may also apply and affect the defendant's sentence:

- 1) pursuant to Comment 7 of U.S.S.G. § 5E1.2, the Court may impose an additional fine to pay the costs to the government of any imprisonment and supervised release term;
- 2) pursuant to 18 U.S.C. § 3612(f), unless otherwise ordered, if the Court imposes a fine of more than \$2,500, interest will be charged on the balance not paid within 15 days after the judgment date; 3) upon violating any condition of supervised release, a further term of imprisonment equal to the period of the supervised release may be imposed, with no credit for the time already spent on supervised release; 4) the Court may order the defendant to pay restitution pursuant to the 18 U.S.C. § 3663 and U.S.S.G. § 5E1.1, and if 18 U.S.C. § 3663A (mandatory restitution for certain crimes) applies, the Court shall order the defendant to pay restitution.

### **b. Payment of Special Assessment**

The defendant agrees to pay the entire special assessment in this case on the day the Court imposes the sentence. All payments will be by check or money order, and are to be delivered to the Clerk of Court, United States District Court, 222 W. 7th Ave. Box 4, Rm. 229, Anchorage, AK 99513-7564.

### **c. Consequences of Felony Conviction**

Any person convicted of a federal felony offense may lose or be denied federal benefits including any grants, loans, licenses, food stamps, welfare or other forms of public U.S. v. Michael Don Robertson

assistance, as well as the right to own or possess any firearms, the right to vote, the right to hold public office, and the right to sit on a jury. If applicable, any defendant who is not a United States citizen may be subject to deportation from the United States following conviction for a criminal offense, be denied citizenship, and not permitted to return to the United States unless the defendant specifically receives the prior approval of the United States Attorney General. In some circumstances, upon conviction for a criminal offense, any defendant who is a naturalized United States citizen may suffer adverse immigration consequences, including but not limited to possible denaturalization.

**E. Restitution**

The parties agree that the defendant will owe \$6,888.39 in restitution to Medicaid. The Court will have sole discretion ultimately to determine if the defendant has liability for any additional restitution.

**F. DEA registration**

The defendant agrees not to apply for a DEA registration for a period of 10 years following the date the Court accepts this plea agreement.

**III. ADVISORY UNITED STATES SENTENCING GUIDELINES, GUIDELINE APPLICATION AGREEMENTS, SENTENCING RECOMMENDATIONS**

**A. Advisory United States Sentencing Guidelines**

The Court must consult the advisory United States Sentencing Commission Guidelines [U.S.S.G.] as well as the factors set forth in 18 U.S.C. § 3553(a) when considering the sentence to impose. The U.S.S.G. do not establish the statutory maximum or minimum sentence applicable to the offense(s) to which the defendant is pleading guilty.

The U.S.S.G. are not mandatory and the Court is not bound to impose a sentence recommended by the U.S.S.G.

**B. Guideline Application Agreements**

The parties have no agreements on any guideline applications unless set forth below in this section.

**1. Acceptance of Responsibility**

If the United States concludes that the defendant has satisfied the criteria set out in U.S.S.G. § 3E1.1 and the applicable application notes, the United States agrees to recommend the defendant for a two level downward adjustment for acceptance of responsibility and, if U.S.S.G. § 3E1.1(b) applies, to move for the additional one level adjustment for acceptance of responsibility. If, at any time prior to imposition of the sentence, the United States concludes that the defendant has failed to fully satisfy the criteria set out in U.S.S.G. § 3E1.1, or has acted in a manner inconsistent with acceptance of responsibility, the United States will not make or, if already made, will withdraw this recommendation and motion.

**2. Aggravating role**

The parties agree that the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. Therefore, the adjusted offense level will be increased four levels, per U.S.S.G. § 3B1.1(a).

### **3. Abuse of trust**

The parties agree that the defendant abused a position of public or private trust in a manner that significantly facilitated the commission or concealment of the offense. Therefore, the adjusted offense level will be increased two levels, per U.S.S.G. § 3B1.3.

### **C. Sentencing Recommendations**

The United States Probation Office will prepare the defendant's pre-sentence report in which it will include a recommended calculation of the defendant's sentence range under the U.S.S.G. Both the United States and the defendant will have the opportunity to argue in support of or in opposition to the guideline sentence range calculation the U.S.P.O. recommends, as well as present evidence in support of their respective sentencing arguments.

The parties are free to recommend to the Court their respective positions on the appropriate sentence to be imposed in this case based on the stipulated facts set forth in Section II.C, any additional facts established at the imposition of sentence hearing, the applicable statutory penalty sections, the advisory U.S.S.G., and the sentencing factors set forth in 18 U.S.C. § 3553.

### **IV. ADDITIONAL AGREEMENTS BY UNITED STATES**

In exchange for the defendant's guilty plea(s) and the Court's acceptance of the defendant's plea(s) and the terms of this agreement, the United States agrees that it will not prosecute the defendant further for any other offense – now known – arising out of the subject of the investigation related to the charges brought in the Information in this case and the defendant's admissions set forth in Section II.C.

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Provided, however, if the defendant's guilty plea(s) or sentence is/are rejected, withdrawn, vacated, reversed, set aside, or modified, at any time, in any proceeding, for any reason, the United States will be free to prosecute the defendant on all charges arising out of the investigation of this case including any charges dismissed pursuant to the terms of this agreement, which charges will be automatically reinstated as well as for perjury and false statements. The defendant hereby agrees that he/she waives any defense that the statute of limitations bars the prosecution of such a reinstated charge.

**V. WAIVER OF TRIAL RIGHTS, APPELLATE RIGHTS, COLLATERAL ATTACK RIGHTS, CLAIM FOR ATTORNEY FEES AND COSTS, AND RULE 410**

**A. Trial Rights**

Being aware of the following, the defendant waives these trial rights:

- If pleading to an Information, the right to have the charges presented to the grand jury prior to entering the guilty plea;
- The right to a speedy and public trial by jury on the factual issues establishing guilt or any fact affecting the mandatory minimum and statutory penalties, and any issue affecting any interest in any assets subject to forfeiture;
- The right to object to the composition of the grand or trial jury;
- The right to plead not guilty or to persist in that plea if it has already been made;

- The right to be presumed innocent and not to suffer any criminal penalty unless and until the defendant’s guilt is established beyond a reasonable doubt;
- The right to be represented by counsel at trial and if necessary to have a counsel appointed at public expense to represent the defendant at trial – the defendant is not waiving the right to have counsel continue to represent the defendant during the sentencing phase of this case;
- The right to confront and cross examine witnesses against the defendant, and the right to subpoena witnesses to appear in the defendant’s behalf;
- The right to remain silent at trial, with such silence not to be used against the defendant, and the right to testify in the defendant’s own behalf; and
- The right to contest the validity of any searches conducted on the defendant’s property or person.

## **B. Appellate Rights**

The defendant waives the right to appeal the conviction(s) resulting from the entry of guilty plea(s) to the charges set forth in this agreement. The defendant further agrees that if the Court imposes a sentence that does not exceed the statutory maximum penalties – as set forth in Section II.D above in this agreement, the defendant waives without exception the right to appeal on all grounds contained in 18 U.S.C. § 3742 the sentence the Court imposes. The defendant understands that this waiver includes, but is not limited to, forfeiture (if applicable), terms or conditions of probation (if applicable) or supervised release, any fines or restitution, and any and all constitutional (or legal) challenges to

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defendant's conviction(s) and guilty plea[s], including arguments that the statute(s) to which defendant is pleading guilty (is/are) unconstitutional, and any and all claims that the statement of facts provided herein is insufficient to support defendant's plea[s] of guilty.

By waiving these rights, the defendant understands that the conviction(s) and sentence the Court imposes will be final. No other court will conduct appellate review of the conviction(s) or the sentence.

The defendant agrees that the appellate and collateral attack waivers contained within this agreement will apply to any 18 U.S.C. § 3582(c) modifications, as well as the district court's decision to deny any such modification.

Should the defendant file a notice of appeal in violation of this agreement, it will constitute a material breach of the agreement. The government is free to reinstate any dismissed charges, and withdraw any motions for downward departures, or sentences below the mandatory minimum made pursuant to 18 U.S.C. § 3553(e).

### **C. Collateral Attack Rights**

The defendant agrees to waive all rights to collaterally attack the resulting conviction(s) and/or sentence – including forfeiture (if applicable) or terms or conditions of probation (if applicable) or supervised release, and any fines or restitution – the Court imposes. The only exceptions to this collateral attack waiver are as follows: 1) any challenge to the conviction or sentence alleging ineffective assistance of counsel – based on information not now known to the defendant and which, in the exercise of reasonable diligence, could not be known by the defendant at the time the Court imposes sentence; and 2) a challenge to the voluntariness of the defendant's guilty plea(s).

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**D. Claim for Attorney Fees and Costs**

Because this is a negotiated resolution of the case, the parties waive any claim for the award of attorney fees and costs from the other party.

**E. Evidence Rule 410 and Fed. R. Crim. P. 11(f)**

By signing this agreement, the defendant admits the truth of the facts in the Factual Basis portion of this agreement set forth in Section II.C. The defendant agrees that the statements made by him in signing this agreement shall be deemed usable and admissible against the defendant as stipulations in any hearing, trial or sentencing that may follow. The foregoing provision acts as a modification, and express waiver, of Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(f), and is effective upon the defendant's in-court admission to the factual basis supporting the plea(s). This provision applies regardless of whether the court accepts this plea agreement.

**VI. ADEQUACY OF THE AGREEMENT**

Pursuant to Local Criminal Rule 11.2(d)(7) and (8), this plea agreement is appropriate in that it conforms with the sentencing goals that would otherwise be applicable to the defendant's case if the defendant had gone to trial and had been convicted on all counts in the charging instrument.

**VII. THE DEFENDANT'S ACCEPTANCE OF THE TERMS OF THIS PLEA AGREEMENT**

I, Michael Don Robertson, the defendant, affirm this document contains all of the agreements made between me – with the assistance of my attorney – and the United States regarding my plea(s). There are no other promises, assurances, or agreements the United

States has made or entered into with me that have affected my decision to enter any plea of guilty or to enter into this agreement. If there are any additional promises, assurances, or agreements, United States and I will jointly inform the Court in writing before I enter my guilty plea(s).

I understand that no one, including my attorney, can guarantee the outcome of my case or what sentence the Court may impose if I plead guilty. If anyone, including my attorney, has done or said anything other than what is contained in this agreement, I will inform the Court when I stand before it to enter my plea.

I enter into this agreement understanding and agreeing that the conditions set forth herein are obligatory and material to this agreement and that any failure on my part to fulfill these obligations will constitute a material breach of this agreement. If I breach this agreement, I agree the United States, in its sole discretion, may withdraw from this agreement and may reinstate prosecution against me on any charges arising out of the investigation in this matter. If my compliance with the terms of this plea agreement becomes an issue, at an appropriate hearing, during which I agree any of my disclosures will be admissible, the Court will determine whether or not I have violated the terms of this agreement. I understand the government's burden to prove a breach will be by a preponderance of the evidence.

I understand the Court will ask me under an oath to answer questions about the offense(s) to which I am pleading guilty and my understanding of this plea agreement. I understand that I may be prosecuted if I make false statements or give false answers and may suffer other consequences set forth in this agreement.

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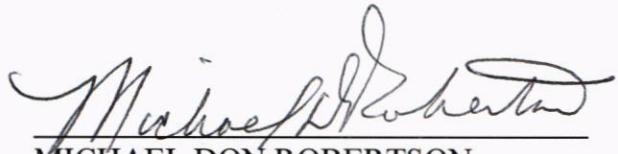
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I have read this plea agreement carefully and understand it thoroughly. I know of no reason why the Court should find me incompetent to enter into this agreement or to enter my plea(s). I enter into this agreement knowingly and voluntarily. I understand that anything that I discuss with my attorney is privileged and confidential, and cannot be revealed without my permission. Knowing this, I agree that this document will be filed with the Court.

I am fully satisfied with the representation given me by my attorney and am prepared to repeat this statement at the time I stand before the Court and enter my guilty plea(s). My attorney and I have discussed all possible defenses to the charge(s) to which I am pleading guilty. My attorney has investigated my case and followed up on any information and issues I have raised to my satisfaction. My attorney has taken the time to fully explain the legal and factual issues involved in my case to my satisfaction. We have discussed the statute(s) applicable to my offense and sentence as well as the possible effect the U.S.S.G. may have on my sentence.

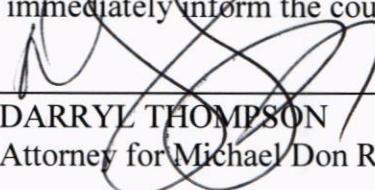
Based on my complete understanding of this plea agreement, I therefore admit that I am guilty of Count 1: Conspiracy to Commit Controlled Substance Fraud, in violation of 21 U.S.C. § 843(a)(3) and 846; and Count 2: Health Care Fraud, in violation of 18 U.S.C. § 1347, as charged in the Information.

DATED: 7-24-19

  
MICHAEL DON ROBERTSON  
Defendant

As counsel for the defendant, I have conveyed all formal plea offers. I have discussed the terms of this plea agreement with the defendant, have fully explained the charge(s) to which the defendant is pleading guilty, the necessary elements thereto, all possible defenses, and the consequences of a guilty plea to a felony. Based on these discussions, I have no reason to doubt that the defendant is knowingly and voluntarily entering into this agreement and entering a plea of guilty. I know of no reason to question the defendant's competence to make these decisions. If, prior to the imposition of sentence, I become aware of any reason to question the defendant's competency to enter into this plea agreement or to enter a plea of guilty, I will immediately inform the court.

DATED: 7/26/19

  
DARRYL THOMPSON  
Attorney for Michael Don Robertson

On behalf of the United States, the following accepts the defendant's offer to plead guilty under the terms of this plea agreement.

DATED: 7/26/19

  
BRYAN SCHRODER  
United States of America  
United States Attorney